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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAGHU RAHAVAN and TIMOTHY POSTON

Appeal 2009-005275
Application 10/771,545
Technology Center 2600

Before ROBERT E. NAPPI, JOHN C. MARTIN, and
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

This is a decision on appeal under 35 U.S.C. § 134(a) of the rejection of claims 1 through 38, and 41.

We affirm-in-part.

INVENTION

The invention is directed to a method of modeling the interaction between tissues and organs in an organism. *See* Spec. pages 1 and 7. Claim 1 is reproduced below:

1. A computer-implemented method of dynamically modeling and displaying a passage of material or information between at least two spatially distributed objects in a body, comprising:
 - creating a first data set of entities between which material or information is transferred;
 - creating a second data set of channels connecting the entities;
 - creating a third data set of types of material or information that each entity transfers via each channel;
 - creating a dynamic map that includes a list of active entities, wherein the dynamic map is communicatively coupled to the active entities so as to provide information thereto;
 - using the dynamic map in conjunction with the first, second, and third data sets to perform a simulation of the transfer of material or information between entities; and
 - outputting the simulation results.

REFERENCES

Priem	US 5,003,497	Mar. 26, 1991
Bard	US 6,210,967 B1	Apr. 3, 2001
Le Pennec	US 6,836,569 B2	Dec. 28, 2004
Allen	US 7,305,331 B2	Dec. 4, 2007

REJECTIONS AT ISSUE

The Examiner has rejected claim 41 under 35 U.S.C. § 101 as being drawn to non-statutory subject matter. Answer 3.²

The Examiner has rejected claims 1 through 5, 7 through 11, 13 through 21, 23 through 38, and 41 under 35 U.S.C. § 102(e) as being anticipated by Allen. Answer 4-10.

The Examiner has rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Allen in view of Bard. Answer 10-11.

The Examiner has rejected claim 12 under 35 U.S.C. § 103(a) as being unpatentable over Allen in view of Le Pennec. Answer 11.

The Examiner has rejected claim 22 under 35 U.S.C. § 103(a) as being unpatentable over Allen in view of Priem. Answer 12.

ISSUE

Initially, we note that Appellants have not presented any arguments directed to the Examiner's rejection of claim 41 under 35 U.S.C. § 101. Accordingly, we are presented with no issues directed to this rejection and sustain the rejection *pro forma*.

Appellants argue on pages 10 and 12 of the Appeal Brief³ that the Examiner's rejection of claims 1 through 5, 7 through 11, 13 through 21, 23

² Throughout this decision we refer to the Examiner's Answer dated September 3, 2008.

³ Throughout this decision we refer to the Appeal Brief dated June 16, 2008, and the Reply Brief dated October 29, 2008.

through 38, and 41 is in error. Appellants argue that Allen does not disclose a step of creating a dynamic map as recited in the independent claims.⁴

Thus, Appellants' arguments present us with the following issue: Did the Examiner err in finding that Allen teaches creating a dynamic map as claimed?

ANALYSIS

Rejection of claims 1 through 5, 7 through 11, 13 through 21, 23 through 38, and 41.

Appellants' arguments have persuaded us that the Examiner erred in finding that Allen teaches creating a dynamic map as claimed. Independent claim 1 recites "a dynamic map that includes a list of active entities, wherein the dynamic map is communicatively coupled to the active entities so as to provide information thereto." Independent claim 41 includes a similar limitation. The Examiner finds that Allen teaches this, stating:

The examiner understands fig. 15 to be an animation representing a "map" in col. 5, line 53 as shown in fig. 10A and 14 where the map shows "active" entities such as "active GTP-bound heterotrimeric Gs protein" that can be animated in fig. 15.

Answer 13. We concur with the Examiner as Allen identifies Figures 10A and 14 as showing a pathway (col. 19, ll. 58-60, col. 21, ll. 4-6) and Figure 15 as showing a dynamic display of a pathway (an animation) (col. 21, ll. 14-15). However, the Examiner has not shown that the maps shown by these figures are communicatively coupled to the entities to provide information to the entities. It appears that these figures merely are displays

⁴ We acknowledge that Appellants present additional arguments, however we do not address these arguments as the issues presented by this argument are dispositive of the appeal.

that provide information to the users and not to the entities, as recited in the claim. Accordingly, the Examiner has not shown that Allen teaches all of the limitations of independent claims 1 and 41, and we will not sustain the Examiner's rejection of claims 1 through 5, 7 through 11, 13 through 21, 23 through 38, and 41 under 35 U.S.C. § 102(e).

In rejecting dependent claims 6, 12, and 22 under 35 U.S.C. § 103(a), the Examiner has relied upon the teachings of Allen to show that the limitations of independent claim 1 were known. The Examiner has not found that the additional teachings of Bard, Le Pennec, or Priem make up for the deficiency noted above in the rejection of claim 1. Accordingly, we will not sustain the Examiner's rejections of claims 6, 12, and 22 under 35 U.S.C. § 103(a) for the same reasons discussed with respect to claim 1.

CONCLUSION

Appellants have persuaded us of error in the Examiner's rejection of claims 1 through 38. However, Appellants have not persuaded us of error in the Examiner's rejection of claim 41.

ORDER

The decision of the Examiner to reject claims 1 through 38, and 41 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2009-005275
Application 10/771,545

AFFIRMED-IN-PART

ELD

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